

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

CRL.A.No. 290 of 2006()

CC.668/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TALIPARAMBA
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APPELLANT: COMPLAINANT:

P.P. BIJU, S/O. PADMANABHAN NAMBIAR
CHENICHERI HOUSE, PARIYARAM CENTRE,
P.O. PARIYARAM, KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS: ACCUSED:

1. KRISHNAN. K., C/O. VIVEKANANDA
CHARITABLE SOCIETY, S/O. K. ACHUTHAN,
VALIYA POYIL, P.O. OLAT, TRIKARIPUR (VIA).

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.C.MURALIKRISHNAN (PAYYANUR)
PUBLIC PROSECUTOR SRI.MUHAMMED PUZHAKKARA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 290 of 2006

Dated this the 12th March, 2007.

J U D G M E N T

The complainant in C.C.No.668/2003, on the file of the Judicial First Class Magistrate Court, Taliparamba, is the appellant. The complaint preferred under Section 138 of the Negotiable Instruments Act, against the first respondent, accused, was dismissed and the accused acquitted, by the learned Magistrate, on the ground that on the appointed date, 14.12.2005, the appellant was absent and the case was posted as last chance, for evidence.

2. Counsel for the appellant submitted that the previous posting was on 7.12.2005, and it was posted on the next week, on 14.12.2006. But the date was mistakenly noted. Counsel also produced photo copy of the proceedings paper to establish that the complainant was present almost on all occasions, except for few days. Thus, the appellant was diligently prosecuting the matter, and the lapse occurred from the office of the Advocate, who appeared for the appellant before the court below. Hence, this appeal after obtaining leave.

3. After hearing both sides, I am of the view that an opportunity be given to the parties to agitate the matter.

4. In the result, the appeal is allowed. The impugned order, dated 14.12.2005, is set aside, and C.C.No.668/2003 is restored to the file of the Judicial First Class Magistrate Court, Taliparamba.

5. The parties shall appear before the court below on 19.4.2007.

6. The learned Magistrate shall dispose of the matter, as per the law, within four months from the date of appearance of the parties, giving an opportunity to both sides, to adduce evidence, if they chose to do so.

**J.M. JAMES,
JUDGE**

nj.